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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/914,473

08/29/2001

Andrew Ferry

5410

7590

12/02/2003

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EXAMINER

HYLTON, ROBIN A.

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/914,473

Applicant(s)

FERRY ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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***Specification***

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

***Claim Rejections - 35 USC § 112***

2. Claims 1-9 and 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The claims are not set forth in a manner to allow one to comprehend how a liner in a closure shell is capable of remaining in the closure shell yet allow an upstanding rim to fold because of the closure shell since movement of the liner must take place. It is suggested the structure of the retaining bead **5** be added to the independent claims.

The use of "includes" in claims 3,7, and 13 is confusing since it appears the preventing means has additional structure. It is suggested "comprises" be used instead.

The use of "it" is confusing since it is unclear which structure is being represented thereby. It is suggested applicant use the noun represented by "it" in the claims.

The phrase following the semi-colon in claims 3,7 and 13 is redundant and unnecessary since the independent claims have previously set forth the preventing means which includes the space prevents the upstanding rim from folding flat.

In claim 6, line 10, it is unclear if "an in-bore device" is in addition to the in-bore device of the preamble.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-9 and 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erba (EP 847,930) in view of Hatakeyama et al. (US 4,238,042).

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Erba teaches the claimed closure, including a preventing means seen in figure 1 surrounding central portion **23**, except for an upstanding rim portion (the outermost unnumbered portion of surrounding central portion **23**) of a sealing flange which cams along the closure to fold toward the sealing flange upon application of the closure to a container.

Hatakeyama teaches a closure **4** having a sealing flange having an upstanding rim **12** that folds toward the sealing flange upon application of the closure to a container. Thus, Hatakeyama teaches it is known to provide a folding rim for biasing a liner against a container mouth.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply teaching of a folding upstanding rim of the sealing flange to the closure of Erba. Doing so maintains the closed container in an air-tight manner and completely prevents the leak of the container contents.

Regarding the camming of the upstanding flange as set forth in claims 5,9, and 15, wherein the upstanding rim of Erba is elongate extending it so as to fold would inherently cam it against the closure shell upon application to a container.

#### ***Response to Arguments***

5. Applicant's arguments filed September 9, 2003 have been fully considered but they are not persuasive.

Since some of the structural features of the applied prior art do not have associated reference characters, none could be used. The examiner has made every attempt to provide reference characters or descriptions of the referenced structure where possible.

As set forth in the rejection under 35 USC 103 above, Hatakeyama teaches it is known to provide an upstanding rim which folds inwardly, yet does not fold flat so as to provide a spring bias between a sealing flange and a closure shell. Erba teaches an upstanding rim (which is unnumbered in the figures). Applying the teaching of a folding rim to bias the sealing flange against a container mouth would have been obvious to one of ordinary skill in the art.

Regarding applicant's remarks at page 9, paragraph 1, the use of the open phrase "comprising" does not preclude additional structure from being disclosed in the prior art reference. Thus, the

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upstanding rim portion if folded would in fact force the entire liner structure of Erba against the container mouth.

Applicant's remarks at page 9, paragraph 1 through page 10, paragraph 1 misrepresent the prior art as applied. No further comment is necessary by the examiner.

6. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

#### **Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures having features similar to that disclosed and/or claimed are cited for their disclosures.

8. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

9. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below.

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
November 26, 2003



Robin A. Hylton  
Primary Examiner  
GAU 3727